IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13102 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INDUSTRIAL CO-OP BANK LTD.

Versus

DAMJIBHAI RATNABHAI MONPURA & ORS.

Appearance:

MR ARUN H MEHTA for the Petitioner
MR DM THAKKAR for Respondents Nos. 1-2
Respondent No. 3 served.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/02/2003

ORAL JUDGEMENT

The petitioner before this Court is the Gujarat

Industrial Cooperative Bank Limited, duly registered as cooperative society (hereinafter referred to as 'the Bank'). The respondent no.3 is the principal debtor. The respondent nos.1 and 2 are the sureties.

It appears that the respondent no.3 had borrowed certain loan from the Bank but, failed to repay the same. The Bank, therefore, instituted Arbitration Suit No.344/1987 for recovery of outstanding dues from the respondent no.3 and the respondents nos.1 and 2 who were the sureties to the said loan transaction. The said suit was decreed on 18th November, 1992. The decree was passed for a sum of Rs.23,872=26 with interest @ 18% per annum. Feeling aggrieved, the defendants nos.2 and 3, the sureties, preferred Appeal No.431/1993 before the Gujarat State Cooperative Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal, under its judgment and order dated 27th April, 1994, allowed the Appeal and set aside the decree passed by the Board of Nominees as against the said appellants. Feeling aggrieved, the Bank has preferred the present petition under Article 227 of the Constitution of India.

Mr.Mehta has submitted that the Tribunal has erred in discharging the defendants nos.2 and 3, the sureties. He has submitted that at the most the defendants could have been discharged to the extent the Bank forego its claim against the goods attached. For rest of the amount, the sureties could not have been discharged. In support of his argument, Mr.Mehta has relied upon the judgment of the Hon'ble Supreme Court in the matter of THE STATE BANK OF SAURASHTRA V/S. CHITRANJAN RANGNATH RAJA AND ANR. [A.I.R. 1980 S.C. 1528] and of the Madhya Pradesh High Court in the matter of KAMLA PRASAD JADAWAL V/S. PUNJAB NATIONAL BANK, NEW DELHI AND ORS. [A.I.R. 1992 Madhya Pradesh 45].

Mr.Thakkar has appeared for the said defendants nos.2 and 3 and has contested the petition. He has submitted that the Bank has, by its act of commission and omission, compounded its outstanding dues against the principal debtor and the guarantors have rightly been discharged by the Tribunal. He has submitted that pending the suit the Bank agreed to the sale of the goods attached and also agreed to transfer of the tenancy. The Bank also agreed to the modification of the interim order on condition that the judgment debtor deposits a sum of Rs.5,000=00. Thus, the Bank had compromised its position as against the principal debtor and this act should result into discharge of the sureties.

In the matter of the State Bank of Saurashtra (supra), a cash credit facility was given by the appellant - Bank to a businessman on the security of pledged goods to be kept in lock and key under the supervision of the Bank and on personal guarantee of the surety. The pledged goods were lost due to the negligence of the Bank. In the circumstances, the Court held that "...once the right of the surety against the principal debtor is impaired by any action or inaction, which implies negligence appearing from lack of supervision undertaken in the contract, the surety would be discharged under the combined operation of Ss.139 and 140 of the Act. In any event, if the creditor loses or without the consent of the surety parts with the security, the surety is discharged to the extent of the surety lost as provided by S.141."

In the matter of Kamla Prasad (supra), the Hon'ble Court, in answer to the contention that "...by not taking appropriate action in time, the Bank destroyed the security, i.e., the hypothecated Tempo and accordingly in the light of Ss.139 and 141 of the Contract Act, it had lost its remedy against the appellant as guarantor of the loan advanced to the respondent no.2", the reliance was placed on the above referred case of the State Bank of Saurashtra. The Court negatived the contention in the light of the specific covenant in the Agreement of Guarantee. The Court observed that "...In the present case, the security remained with the borrower in accordance with Hypothecation Agreement (Ex.P.9). In the peculiar facts and circumstances of the present case, it cannot be said that by not taking legal steps or steps for enforcing the security at an early date, the respondent no.1 was negligent in protecting the security offered by the borrower."

In the present case, it appears that pending the suit before the Board of Nominees, the Court had attached certain goods and had granted stay against the transfer of the tenancy right. However, on applications exhibits 16 and 17 made by the principal debtor, the Bank agreed to modify the stay order on condition that the principal debtor deposits a sum of Rs.5,000=00. Thus, the Bank agreed to forego the security of goods placed under the attachment by the Court. The Bank also agreed that the tenancy right of the principal debtor be permitted to be transferred. Besides, the Board of Nominees has specifically directed that the decree shall be first executed against the defendant no.1 i.e. the principal debtor, failing which the decree may be executed against

the defendants nos.2 and 3 i.e. the guarantors. The Bank, however, has failed to take any step for recovery of its dues against the principal debtor.

In above set of facts, neither of the judgments relied upon by Mr.Mehta shall have applicability. It is not established that only a part of the security was allowed to be wasted. I am of the opinion that the Tribunal has rightly held that the Bank was negligent in allowing the principal debtor to dispose of the goods pledged under attachment and to transfer the tenancy rights. Both the sureties have rightly been discharged by the Tribunal. No interference is, therefore, warranted. The petition is dismissed with costs. Rule is discharged.

(Ms. R.M. Doshit, J.)

/sakkaf